

SERVICE DATE – JULY 16, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35239

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER

Digest:¹ In this decision, we are denying a petition for reconsideration of the Board's April 19, 2013 decision in this proceeding as the petitioner has failed to demonstrate material error on the agency's part.

Decided: July 12, 2013

BACKGROUND

On April 23, 2009, Allegheny Valley Railroad Company (AVRC or Petitioner) filed a petition for declaratory order (2009 Petition), asking the Board to “terminate a controversy or remove uncertainty with respect to [AVRC]’s ownership of and continued right to use the permanent rail easement between 16th and 21st Streets in the Pittsburgh Strip District”, a portion of the Valley Industrial Track (VIT), crossing property owned by The Buncher Company (Buncher).² In the 2009 Petition and subsequent pleadings, AVRC asserted that whether the VIT had been abandoned by Consolidated Rail Corporation (Conrail) prior to a 1995 transfer of certain Conrail assets to AVRC was important to its position that it possesses an active railroad easement on property now owned by Buncher, contending that Conrail had “retained the permanent rail easement to continue to operate over and maintain its ‘so-called Valley Industrial Track’ on the north side of the Pittsburgh Produce Terminal.”³ AVRC contested Buncher’s position that AVRC did not acquire a railroad easement across Buncher’s property in 1995 because the line that crossed Buncher’s property had previously been abandoned pursuant to 1984 Interstate Commerce Commission (ICC) abandonment authority. AVRC’s position was that a different track with the same name had been the subject of the 1984 abandonment proceeding and that, even if the 1984 abandonment did cover the track on Buncher’s property,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² 2009 Petition 3.

³ Verified Statement of Russell A. Peterson, submitted with AVRC’s Statement of Facts and Arguments—Remanded Proceeding 2, May 11, 2011.

Conrail never consummated that abandonment and still retained a railroad easement to convey to AVRC in 1995.⁴ In a decision served on June 15, 2010 (June 2010 Decision), the Board found that AVRC possessed an active railroad easement over property owned by Buncher.⁵

Buncher appealed to the U.S. Court of Appeals for the District of Columbia Circuit and later filed a Motion to Adduce Additional Evidence Pursuant to 28 U.S.C. § 2347(c), submitting new evidence that it argued would affect the Board's June 2010 Decision. The Board filed a motion for voluntary remand, and the court remanded the case to the Board in an order issued January 26, 2011. The Board subsequently vacated and reversed the June 2010 Decision in a decision served on April 19, 2013 (April 2013 Decision), in which it found, based on all of the evidence then available, that Conrail "had no railroad easement interest to convey to AVRC in 1995" because Conrail had filed for and received authority from the ICC to abandon the VIT in 1984 and had also consummated that abandonment. April 2013 Decision, slip op. at 14.

On May 1, 2013, AVRC filed a petition for reconsideration, asking the Board to "correct[] or delet[e] its improper finding on [p]age 14 of its April 19, 2013 decision regarding the property interest conveyed by Conrail in 1995 to AVRC under Pennsylvania property law."⁶ In its petition, AVRC contends that the Board's finding on page 14 of the April 2013 Decision "involves a clear material error of law" because it (1) is contrary to the Board's decision in MVC Transportation, LLC—Acquisition Exemption—P&LE Properties, Inc. (MVC), FD 34462, slip op. at 6 (STB served Oct. 20, 2004); (2) interprets the duration or existence of an easement under Pennsylvania law; and (3) pertains to a deed conveyance beyond the Board's abandonment jurisdiction.⁷

On May 17, 2013, Buncher filed an opposition to AVRC's petition for reconsideration, arguing that there are no grounds on which the Board should reconsider or revise the April 2013 Decision.⁸ Buncher argues that the Board's April 2013 Decision addresses the status of Conrail's railroad easement because that is the specific issue AVRC requested the Board to address in its 2009 Petition. Buncher further asserts that nothing in the Board's decision improperly encroaches on matters of state law.⁹

⁴ AVRC argued in support of its petition for declaratory order, "[n]onetheless, despite the absence of immediate prospects for new rail shippers, Conrail did not seek ICC abandonment authority for this portion of the line and executed no release of the railroad easement to Buncher." AVRC Pet. for Decl. Order 5.

⁵ June 2010 Decision, slip op. at 2.

⁶ AVRC Pet. for Recon. 6.

⁷ Id. at 5.

⁸ Buncher Reply 2.

⁹ Id.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 722(c) and 49 C.F.R. § 1115.3(b), the Board will grant a petition for reconsideration only upon a showing that the prior action: (1) will be affected materially because of new evidence or changed circumstances; or (2) involves material error. Or. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Cent. Or. & Pac. R.R., FD 35160, slip op. at 2 (STB served Mar. 12, 2009). AVRC alleges that the finding on page 14 of the Board's April 2013 Decision concerning whether the railroad easement was conveyed in 1995 “involves a clear material error of law” in its purported interpretation of Pennsylvania property law.

AVRC has not met its burden for showing that we materially erred in our April 2013 Decision. In the 2009 Petition, AVRC asked the Board to address the issue of whether it possessed a railroad easement crossing Buncher's property,¹⁰ and the Board ruled on that very issue in the April 2013 Decision, finding that it was indeed the track on Buncher's land that had been the subject of the VIT abandonment, and that the abandonment had been consummated prior to 1995.

Contrary to AVRC's assertion, the Board's determination regarding that railroad easement did not include an interpretation of Pennsylvania property law. The Board found, based on an analysis of events that took place in the area and Conrail's actions (or inaction), that the VIT, including any railroad easement permitting freight operations over it, had been fully abandoned before the alleged 1995 conveyance of the railroad easement to AVRC via quitclaim deed.¹¹ This finding was made pursuant to the federal Interstate Commerce Act, which governs exit licensing for interstate rail lines, including easements.

In making its finding under federal law, the Board considered the evidence of the quitclaim deed from Conrail to AVRC. While the Board noted that a quitclaim deed is not understood to be a warrant that a party actually possesses the rights described therein,¹² that statement is derived from the general meaning of the term “quitclaim” rather than any interpretation of Pennsylvania law. The Board provided this explanation when determining that the quitclaim deed was insufficient to outweigh the other evidence in the record supporting the conclusion that Conrail had consummated abandonment of the VIT under federal law prior to 1995.¹³ As such, the April 2013 Decision is consistent with the Board's statement in MVC that property law issues are properly resolved by state courts, not by this agency.

¹⁰ 2009 Petition 3.

¹¹ April 2013 Decision, slip op. at 14.

¹² Id. at 15

¹³ Id.

As the Board has made clear in the past, the agency has jurisdiction not only over railroad lines, but over railroad easements as well.¹⁴ Here, as explained in the April 13 Decision, the Board properly concluded that the VIT track, including the track on Buncher's land, was authorized for abandonment in 1984 and that the abandonment was consummated prior to 1995, thereby removing the VIT, including any railroad easement on the portion of the track that crosses Buncher's property, from the national rail transportation system. It was for this reason (and not state property law) that the agency concluded, with respect to the Board's jurisdiction, that by 1995 there remained no "railroad easement" over Buncher's property for Conrail to convey to AVRC and no federally granted operating authority to conduct common carrier freight transportation on the property. The Board properly relied upon the record and its own precedent in determining that the track at issue here was authorized to be abandoned and that Conrail consummated the abandonment authority issued by the ICC prior to the time of the alleged conveyance. Accordingly, AVRC has failed to demonstrate material error on the agency's part, and we will therefore deny the petition for reconsideration.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. AVRC's petition for reconsideration is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

¹⁴ The fact that this case involved a railroad easement does not affect the extent of the Board's jurisdiction or mean that the Board, by use of the term "railroad easement," was interpreting state property law. The Board has consistently treated rail freight easements as "rail carrier property that cannot be transferred or abandoned without Board authorization." Mass. Coastal R.R.—Acquisition—CSX Transp., Inc., FD 35314, slip op. at 3 (STB served Mar. 29, 2010).